

## Substitute for SENATE BILL No. 33

By Committee on Assessment and Taxation

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1 AN ACT concerning sales taxation; relating to exemptions; excluding  
2 exempt sales of certain custom meat processing services from  
3 exemption certificate requirements; amending K.S.A. 79-3651 and  
4 repealing the existing section.  
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 79-3651 is hereby amended to read as follows: 79-  
8 3651. (a) For the purpose of the proper administration of the Kansas  
9 retailers' sales tax act and to prevent evasion of the tax imposed  
10 thereunder, it shall be presumed that all gross receipts from the sale of  
11 tangible personal property or enumerated services are subject to tax until  
12 the contrary is established. The burden of proving that a sale is not subject  
13 to tax is upon the seller unless the seller takes from the purchaser an  
14 exemption certificate to the effect that the property or service purchased is  
15 not subject to tax.

16 (b) An exemption certificate shall relieve the seller from collecting  
17 and remitting tax if the seller has obtained the required identifying  
18 information as determined by the director, from the purchaser and the  
19 reason for claiming the exemption at the time of purchase and has  
20 maintained proper records of exempt transactions pursuant to ~~subsection~~  
21 ~~(a)~~ of K.S.A. 79-3609(a), and amendments thereto, and provided them to  
22 the director when requested, except that no such relief from liability shall  
23 apply to a seller who: Fraudulently fails to collect the tax; solicits  
24 purchasers to participate in the unlawful claim of an exemption; accepts an  
25 exemption certificate claiming an entity based exemption when the subject  
26 of the transaction is actually received by the purchaser at a location  
27 operated by the seller and the director provides an exemption certificate  
28 that clearly and affirmatively indicates that the claimed exemption is not  
29 available. The seller shall obtain the same information for proof of a  
30 claimed exemption regardless of the medium in which the transaction  
31 occurred. The purchaser improperly claiming an exemption shall remain  
32 liable for the nonpayment of tax.

33 (c) The exemption certificate shall be substantially in such form as  
34 the director may prescribe. The seller shall use the standard form for  
35 claiming an exemption electronically as adopted by the director. A seller  
36 may require a purchaser to provide a copy of the purchaser's sales tax

1 registration certificate with a resale certificate as a condition for honoring  
2 the purchaser's resale exemption claim, except that in the case of drop  
3 shipment sales into this state, the third party vendor may claim a resale  
4 exemption based on an exemption certificate provided by its customer, re-  
5 seller, or any other information acceptable to the secretary available to the  
6 third party vendor evidencing qualification for a resale exemption,  
7 regardless of whether the customer, re-seller, is registered to collect and  
8 remit sales and use tax in this state. A purchaser is not required to provide  
9 a signature to claim an exemption from tax unless a paper exemption  
10 certificate is used. A seller is relieved of liability for the tax otherwise  
11 applicable if it obtains a blanket exemption certificate for a purchaser with  
12 which the seller has a recurring business relationship. Such blanket  
13 certificate need not be renewed or updated by the seller for exemption  
14 certificate information or data elements when there is a recurring business  
15 relationship between the buyer and seller. For purposes of this subsection,  
16 a recurring business relationship exists when a period of no more than 12  
17 months elapses between sales transactions.

18 (d) To lawfully present a resale exemption certificate the purchaser  
19 must be engaged in the business of selling property or services of the same  
20 kind that is purchased, hold a registration certificate, except as otherwise  
21 permitted in subsection (c) for drop shipment sales into this state, and at  
22 the time of purchase, either intend to resell the property in the regular  
23 course of business or be unable to ascertain whether the property will be  
24 resold or used for some other purpose. A resale exemption certificate may  
25 be used for resale of services to tangible personal property and not for  
26 services to real property.

27 (e) Any person who issues a resale certificate or other exemption  
28 certificate in order to unlawfully avoid payment of tax for business or  
29 personal gain shall be guilty of a misdemeanor and upon conviction shall  
30 be punished by a fine of not more than \$1,000 or imprisonment for not  
31 more than one year, or by both. In addition, if the director determines that  
32 a person issued a resale certificate in order to unlawfully avoid payment of  
33 tax for business or personal gain, the director shall increase any penalty  
34 that is due from the person under K.S.A. 79-3615, and amendments  
35 thereto, by \$250 or 10 times the tax due, whichever is greater, on each  
36 transaction where the misuse of a resale certificate occurred.

37 (f) Exemption certificates issued by an entity claiming a specific  
38 exemption under K.S.A. 79-3606, and amendments thereto, based on the  
39 status of the entity shall bear the name, address of the entity and  
40 identification number issued to the entity pursuant to K.S.A. 79-3692, and  
41 amendments thereto. Such certificate shall be signed by an authorized  
42 person of the nonprofit entity, if in paper form, and contain the tax  
43 identification number of the entity. The certificate shall be substantially in

1 such form as the director may prescribe. A seller may require that  
2 payments be made on an exempt entity's check, warrant, voucher or  
3 charged to the entity's account as a condition for honoring the entity's  
4 exemption claim.

5 (g) It shall be the duty of every person who purchases tangible  
6 personal property or services that are taxable under this act to pay the full  
7 amount of tax that is lawfully due to the retailer making the sale. Any  
8 person who willfully and intentionally refuses to pay such tax to the  
9 retailer shall be guilty of a misdemeanor and upon conviction shall be  
10 punished and fined as provided by ~~subsection (g)~~ of K.S.A. 79-3615(h),  
11 and amendments thereto.

12 (h) *On and after July 1, 2024, notwithstanding any provisions to the*  
13 *contrary in this section or any other provision of law, purchasers claiming*  
14 *an exemption pursuant to K.S.A. 79-3606(rrrr), and amendments thereto,*  
15 *shall not be required to provide an exemption certificate or form to the*  
16 *seller; and the seller shall not be required to receive and maintain a*  
17 *completed exemption certificate or form for such exempt transactions. If*  
18 *the seller in the ordinary course of business believes that the service*  
19 *qualifies for the exemption pursuant to K.S.A. 79-3606(rrrr), and*  
20 *amendments thereto, the seller shall be relieved from collecting and*  
21 *remitting the tax and shall not have the burden of proving that the service*  
22 *is not subject to tax pursuant to subsection (a). A purchaser improperly*  
23 *claiming the exemption shall remain liable for the nonpayment of tax.*

24 Sec. 2. K.S.A. 79-3651 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its  
26 publication in the statute book.